

SHELBY COUNTY

INSURANCE REQUIREMENTS

AND RECOMMENDATIONS

MANUAL

FINANCE DEPARTMENT AND CONTRACT ADMINISTRATION
March 2006

TABLE OF CONTENTS

INSURANCE REQUIREMENTS/RECOMMENDATIONS	2
Distribution	2
Purpose	2
GENERAL INFORMATION	4
STANDARD INSURANCE PROVISIONS CONTRACTS AND SERVICES	6
A1 CONSTRUCTION OR INSTALLATION PROJECT LESS THAN \$1,000,000	6
A2 CONSTRUCTION OR INSTALLATION PROJECT GREATER THAN \$1,000,000; LESS THAN \$5,000,000	6
A3 CONSTRUCTION AND INSTALLATION PROJECTS GREATER THAN \$5,000,000	7
A4 PROFESSIONAL SERVICES/PROVIDER PROJECTS LESS THAN \$1,000,000	8
A5 PROFESSIONAL SERVICES/PROVIDER PROJECTS GREATER THAN \$1,000,000	8
A6 ENVIRONMENTALLY SENSITIVE PROJECTS	9
A7 LEASE ON BUILDING STRUCTURE (COUNTY OWNED FACILITY)	10
A8 TRANSPORTATION AND/OR DISPOSAL (ABATEMENT) OF HAZARDOUS MATERIALS	10
A9 TRANSPORTATION SERVICE PROVIDER	11
A10 VEHICLE TOWING CONTRACTS	12
A11 WATERFRONT EXPOSURES	12
A12 SPECIAL EVENTS, FESTIVALS, ETC.	12
OTHER INSURANCE PROVISIONS	13
INSURANCE COVERAGES AND GLOSSARY OF TERMS	16
CHART	21
- OVERVIEW OF PROCESS FOR USING HOLD-HARMLESS AND INSURANCE CLAUSES	

INSURANCE REQUIREMENTS/RECOMMENDATIONS

Distribution

This set of instructions should be distributed to personnel who:

- 1) Draft, negotiate and review County contracts, leases, agreements, requests for proposal/bids, and purchase orders;
- 2) Require certificates of insurance and follow-up to ensure current certificates of insurance are in force for ongoing projects.

Purpose

The County requires suppliers, contractors, lessees, consultants and permittees (the other party to a County contract) to maintain insurance covering them against claims or judgments arising from their products or activities for the County. The insurance is to be extended to protect Shelby County, its elected officials, appointees, employees, volunteers and members of its boards, commissions and agencies.

The County also requires the responsible party to defend, indemnify and hold harmless the County for losses arising out of the activities, services or products of its suppliers, contractors, lessees, consultants and permittees. This indemnification is a second source of protection, in addition to insurance purchased by the other party.

To provide adequate protection, the required liability insurance must:

- 1) Cover the specific exposures to loss arising out of the services required by the contract;
- 2) Contain limits high enough to cover potentially adverse judgments.

Departments should not feel that these requirements impose a heavy burden on the contractor. These requirements are reasonable as the other party is the active party whose operations, services or products are the cause of the claim. In most cases, the contractor will already have the required insurance. If not, the contractor, the public and the County will be better protected when the required coverage is obtained.

The County's standard contracts should contain a description of the required insurance and contain a hold harmless and indemnification clause. This clause automatically takes effect when the contract is signed by both parties, but the required insurance does not take effect automatically. It comes into existence only when the other party's insurance company or their broker issues the required insurance policies/certificates or endorses existing policies to conform to the County's requirements.

Because required insurance coverage is not automatic, the County must have proof that the insurance is in effect before the contract is accepted and signed by the County. Therefore, the County should not sign a contract until insurance certificates and endorsements (when appropriate) are received evidencing the required coverage and approved by the County's Contract Administrator and Insurance Specialist. The Insurance Specialist and Contract Administrator have prepared this manual for your use in preparing contracts, proposals, leases, agreements, etc. for compliance with the County's insurance requirements.

THE INCLUSION AND ENFORCEMENT OF THE COUNTY'S INSURANCE PROVISIONS IN ALL CONTRACTS, PROFESSIONAL SERVICE AGREEMENTS, PERMITS, ETC. ARE THE RESPONSIBILITY OF THE INDIVIDUAL DEPARTMENT GENERATING THE PARTICULAR ACTIVITY.

It is critical that departments or divisions which have operations requiring the enforcement of the County's insurance provisions designate an appropriate member of their staff to be responsible for ensuring that all insurance coverage requirements are met and are enforced during the specified time period. Certificates of Insurance and Endorsements are to be maintained by all of the departments/divisions with their file. All original documents related to Bids/RFPs are maintained with the Bid/RFP file retained by the Purchasing Department. When received and PRIOR to execution or release, the insurance certificates along with a copy of the applicable contract/proposal/agreement should be routed to the Contract Administrator and Insurance Specialist for review and approval. The process flows smoother when these departments are brought into the process early when needed, rather than trying to add/approve something at the last minute.

The responsibility for following the procedures outlined in this manual is not limited to the specialized operations cited above; it is incumbent on *every County department* who enters into a contract or agreement to follow the procedures outlined in this manual and to ensure that all required insurance coverages are enforced and appropriate records of certificates of insurance are kept. Insurance specifications for all Bids/RFPs shall be reviewed and approved by the Insurance Specialist prior to delivery to the Purchasing Department.

Like most documents which set forth a guideline or a standard, not all possible situations will be directly addressed in the following pages. Some situations may involve unusual risks or complex issues where the standard insurance requirements are not appropriate. For those situations, or any other insurance-related question, please contact the County's Insurance Specialist.

GENERAL INFORMATION

The County purchases a significant amount of goods and services under contract each year. These contracts range from complete construction of new buildings, major remodeling of existing structures, small building maintenance agreements, professional service agreements, lease or purchase of equipment or property, etc. The dollar amount and duration of the contract is very seldom a precise indicator of the amount of bodily injury or property damage claims that could result from activities under the contract. Consequently, contract size and duration alone will generate few exceptions to the standard insurance requirements. In situations involving major public works or other large contracts or if there is just some question regarding the appropriateness of particular requirements, the County's Insurance Specialist should be consulted to determine if higher liability limits should be required.

There are several basic steps which should be followed in administering the insurance provisions in contracts where the other party is required to provide insurance to protect Shelby County, its elected officials, appointees, employees, volunteers and members of its boards, commissions and agencies.

A. *Develop Correct Insurance Specifications*

The first step in the process is to develop a clear set of specifications describing the insurance to be provided by the other party. These specifications should be included in the contract between the County and the other party. This manual contains a sample set of insurance requirements/specifications which should be utilized in most contracts, bid packages or RFPs, purchase orders (involving services), professional service agreements, leases and a variety of permits. **HOWEVER, THIS SAMPLE SET OF REQUIREMENTS/SPECIFICATIONS DOES NOT FIT ALL SITUATIONS.** If you must deal with an unusual situation or are not certain that the samples are appropriate, ask the Insurance Specialist for assistance.

A later section of this manual is devoted to a glossary of insurance terms you may encounter.

B. *Inform Bidders of and Incorporate the Insurance Requirements Early in the Bid or RFP Process*

By providing all insurance requirements up front in the Bid/RFP process, potential contractors will be able to solve any potential problems they may have in meeting our requirements. This will enhance the number of Bid/RFP responses and eliminate most last minute problems regarding insurance.

C. *Monitoring Existing Policies/Endorsements*

Normally as proof of insurance, a vendor/contractor will have their insurance agent or broker provide what is referred to as a certificate of insurance. This is typically a standardized form identifying the vendor/contractor, their insurance agent/broker, insurance carrier(s), and types, limits and expiration dates for the applicable coverages. It will also include any specific information pertaining to the agreement, include a cancellation notice and is signed by their licensed insurance agent/broker. Note the expiration date of the policies. If any policies will expire during the term of the contract or project, the department administrator or manager should note on it their calendar for at least 30 days prior to the expiration of the insurance. At that time, if you have not received proof of renewal or replacement coverage, you should send a letter to the other party stating that the County requires receipt of new certificates of insurance and endorsements before the existing coverage expires. If notice of insurance policy cancellation is

received and coverage lapses without any written renewal or replacement of coverage confirmation prior to the date of the cancellation or lapse in coverage, you should immediately notify the Insurance Specialist. The Insurance Specialist will consult with the Contract Administrator as to whether a stop-work notice should be issued.

D. *Save the Signed Forms for at Least Five (5) Years*

After the contract has expired or the job is completed, save the endorsements and certificate forms for at least five (5) years and preferably longer. Claims may be presented many years after work is completed. The certificate and endorsement forms may be the County's only proof of coverage.

STANDARD INSURANCE PROVISIONS CONTRACTS AND SERVICES

Prior to commencing work, the contractor shall procure and maintain at contractor's own cost and expense for the duration of the contract and any extensions the following insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work or services hereunder by the Contractor, his agents, representatives, employees or subcontractors. The cost of such insurance shall be included in Contractor's bid:

A1. CONSTRUCTION OR INSTALLATION PROJECT LESS THAN \$1,000,000

Minimum Limits of Insurance

Contractor shall maintain limits no less than:

- 1) *Commercial General Liability Insurance* - \$1,000,000 limit per occurrence for bodily injury and property damage/\$1,000,000 personal and advertising injury/\$2,000,000 General Aggregate/\$2,000,000 Products-Completed Operations Aggregate. The service provider should indicate in its bid whether the coverage is provided on a claims-made or preferably on an occurrence basis. The insurance shall include coverage for the following:
 - a) Premises/Operations
 - b) Products/Completed Operations
 - c) Personal Injury
 - d) XCU coverage, where applicable
 - e) Contractual Liability
 - f) Independent Contractors
 - g) Broad Form Property Damage
- 2) *Business Automobile Liability Insurance* - \$1,000,000 each accident for bodily injury and property damage. Coverage is to be provided on all:
 - a) Owned/Leased Autos
 - b) Non-owned Autos
 - c) Hired Autos
- 3) *Workers Compensation and Employers' Liability Insurance* - Workers Compensation statutory limits as required by Tennessee law. This policy should include Employers' Liability coverage for \$500,000 per accident.
- 4) *Builders Risk Insurance or Installation Floater (as applicable)* – All risk coverage in the amount of the structure/equipment which is to be built or installed. Consult Insurance Specialist.

A2. CONSTRUCTION OR INSTALLATION PROJECT GREATER THAN \$1,000,000; LESS THAN \$5,000,000

Minimum Limits of Insurance

Contractor shall maintain limits no less than:

- 1) *Commercial General Liability Insurance* - \$1,000,000 limit per occurrence for bodily injury and property damage/\$1,000,000 personal and advertising injury/\$2,000,000 General Aggregate/\$2,000,000 Products-Completed Operations Aggregate. The service

provider should indicate in its bid whether the coverage is provided on a claims-made or, preferably, on an occurrence basis. The insurance shall include coverage for the following:

- a) Premises/Operations
- b) Products/Completed Operations
- c) Personal Injury
- d) XCU coverage, where applicable
- e) Contractual Liability
- f) Independent Contractors
- g) Broad Form Property Damage

2) *Umbrella* - \$2,000,000 limit.

3) *Business Automobile Liability Insurance* - \$1,000,000 each accident for property damage and personal injury. Coverage is to be provided on all:

- a) Owned/Leased Autos
- b) Non-owned Autos
- c) Hired Autos

4) *Workers Compensation and Employers' Liability Insurance* - Workers Compensation statutory limits as required by Tennessee Law. This policy should include Employers Liability Coverage for \$1,000,000 per accident.

5) *Builders Risk Insurance* or Installation Floater (as applicable) – All risk coverage in the amount of the structure/equipment which is to be built or installed. Consult Insurance Specialist.

A3. Construction and Installation Projects Greater Than \$5,000,000

Minimum Limits of Insurance

Contact Insurance Specialist. Generally, the previous section insurance requirements would apply, but limits could be higher.

Long Term Completed Operations Coverage. The owner of a completed construction project should require the general contractor to have completed operations coverage in place for a stated number of years following completion of the project.

A more realistic but less secure approach to this problem is to require that the contractor maintain CGL coverage as required in the contract for a minimum period of years following completion of the project. For example, the contract might require the contractor to purchase products-completed operations coverage for at least five (5) years following completion of the project. Since most contractors will purchase this coverage for their own protection anyway, as well as to comply with requirements imposed by owners on future projects, this should not be burdensome to them. Consult the Contract Administrator and the Insurance Specialist for each particular construction project.

Owner Controlled Wrap-Up – Consider use of a wrap up if project is large enough. Contact Insurance Specialist.

A4. PROFESSIONAL SERVICES/CONSULTANT PROJECTS LESS THAN \$1,000,000

Minimum Limits of Insurance

Consultant/provider shall maintain coverage with limits of no less than:

- 1) *Commercial General Liability Insurance* \$1,000,000 limit per occurrence bodily injury and property damage/\$1,000,000 personal and advertising injury/\$2,000,000 General Aggregate/\$2,000,000 Products-Completed Operations Aggregate. The consultant/provider should indicate in its bid whether the coverage is provided on a claims-made or preferably on an occurrence basis. The insurance shall include coverage for the following:
 - a) Premises/Operations
 - b) X, C, & U
 - c) Products/Completed Operations
 - d) Contractual
 - e) Independent Contractors
 - f) Broad Form Property Coverage
 - g) Personal Injury
- 2) *Business Automobile Liability Insurance* - \$1,000,000 each accident for property damage and personal injury. Coverage is to be provided on all:
 - a) Owned/Leased Autos
 - b) Non-owned Autos
 - c) Hired Autos
- 3) *Workers Compensation and Employers' Liability Insurance* - Workers Compensation statutory limits as required by Tennessee. This policy should include Employers' Liability Coverage for \$1,000,000 per accident.
- 4) *Professional Liability Insurance* - \$1,000,000 per claim/\$3,000,000 annual aggregate. Indicate if coverage is on occurrence basis or claims-made.

A5. PROFESSIONAL SERVICES/CONSULTANT PROJECTS GREATER THAN \$1,000,000

Minimum Limits of Insurance

Consultant/provider shall maintain coverage with limits of no less than:

- 1) *Commercial General Liability Insurance* - Consult Insurance Specialist.
- 2) *Business Automobile Liability Insurance* - Consult Insurance Specialist.
- 3) *Workers Compensation and Employers' Liability Insurance* - Workers Workers Compensation statutory limits as required by Tennessee law. This policy should also include Employers' Liability Coverage for \$1,000,000.
- 4) Umbrella Liability – Consult Insurance Specialist.
- 5) *Professional Liability Insurance* - Consult Insurance Specialist.

A6. ENVIRONMENTALLY SENSITIVE PROJECTS

Minimum Limits of Insurance

Service Provider shall maintain limits no less than:

- 1) *Commercial General Liability Insurance* - \$1,000,000 limit per occurrence for bodily injury and property damage/\$1,000,000 personal and advertising injury/\$2,000,000 General Aggregate/\$2,000,000 Products-Completed Operations Aggregate. The service provider should indicate in its bid whether the coverage is provided on a claims-made or preferably on an occurrence basis. The insurance shall include coverage for the following:
 - a) Premises/Operations
 - b) Explosion, Collapse and Underground Property Damage Hazard (only when applicable to the project)
 - c) Products/Completed Operations
 - d) Contractual
 - e) Independent Contractors
 - f) Broad Form Property Damage
 - g) Personal Injury
- 2) *Business Automobile Liability Insurance* - \$1,000,000 each accident for property damage and personal injury. Coverage is to be provided on all:
 - a) Owned/Leased Autos
 - b) Non-owned Autos
 - c) Hired Autos
- 3) *WorkersWorkers Compensation and Employers' Liability Insurance* - WorkersWorkers Compensation statutory limits as required by Tennessee law. This policy should include Employers' Liability coverage for \$1,000,000 per accident.
- 4) *Professional Liability Insurance* - Dependent on specific project. Consult Insurance Specialist.
- 5) *Environmental Liability Insurance – Pollution Coverage* - This should significantly cover the clean-up, disposal and transportation of solid or other hazardous waste material. It should also cover bodily injury and property damage resulting from solid and hazardous waste material. Limit of coverage to be dependent on specific project, but no less than \$1,000,000 per occurrence.
- 6) Umbrella Liability - \$2,000,000 per occurrence.

NOTE: It is also recommended that the Insurance Specialist be consulted on these types of projects/agreements on a specific case by case basis to ensure that the County is adequately protected against exposures to loss.

A7. LEASE ON BUILDING STRUCTURE (COUNTY OWNED FACILITY)

Minimum Limits of Insurance:

Leasee shall maintain limits no less than:

- 1) *Commercial General Liability Insurance* - \$1,000,000 limit per occurrence for bodily injury and property damage/\$1,000,000 personal and advertising injury/\$100,000 damage to rented premises/\$2,000,000 General Aggregate/\$2,000,000 Products-Completed Operations Aggregate. The Leasee should indicate in its bid whether the coverage is provided on a claims-made or, preferably, on an occurrence basis. The insurance shall include coverage for the following:
 - a) Premises/Operations
 - b) Explosion, Collapse and Underground Property Damage Hazard (only when applicable to the project)
 - c) Products/Completed Operations
 - d) Contractual
 - e) Independent Contractors
 - f) Broad Form Property Damage
 - g) Personal Injury
- 2) *Business Automobile Liability Insurance* - \$1,000,000 each accident for property damage and personal injury. Coverage is to be provided on all:
 - a) Owned/Leased Autos
 - b) Non-owned Autos
 - c) Hired Autos
- 3) *Workers Compensation and Employers' Liability Insurance* - Workers Compensation statutory limits as required by Tennessee law. This policy should include Employers' Liability coverage for \$1,000,000 per accident.
- 4) *All-Risk Property Coverage* - Coverage should be on all risk, replacement cost basis value of building/structure/property. Shelby County Government is to be named on the policy as loss payee.

A8. TRANSPORTATION AND/OR DISPOSAL (ABATEMENT) OF HAZARDOUS MATERIALS

Minimum Limits of Insurance

Provider shall maintain limits no less than:

- 1) *Commercial General Liability Insurance* - \$1,000,000 limit per occurrence for bodily injury and property damage/\$1,000,000 personal and advertising injury/\$100,000 damage to rented premises/\$2,000,000 General Aggregate/\$2,000,000 Products-Completed Operations Aggregate. The Leasee should indicate in its bid whether the coverage is provided on a claims-made or, preferably, on an occurrence basis. The insurance shall include coverage for the following:
 - a) Premises/Operations
 - b) Explosion, Collapse and Underground Property Damage Hazard (only when applicable to the project)
 - c) Products/Completed Operations

- d) Contractual
 - e) Independent Contractors
 - f) Broad Form Property Damage
 - g) Personal Injury
- 2) *Business Automobile Liability Insurance* - \$1,000,000 limit per accident for property damage and personal injury. Coverage is to be provided on all:
 - a) Owned/Leased Autos
 - b) Non-owned Autos
 - c) Hired Autos
 - 3) *Workers Compensation and Employers' Liability Insurance* - Workers Compensation statutory limits as required by Tennessee law. This policy should include Employers' Liability coverage for \$1,000,000 per accident.
 - 4) *Environmental Liability* - \$5,000,000 per occurrence. This should cover the clean-up, disposal, and transportation of solid and hazardous waste material. It should also cover bodily injury and property damage resulting from solid and hazardous waste material.
 - 5) \$5,000,000 Umbrella Liability.

NOTE: It is also recommended that Insurance Specialist be consulted on these types of projects in a specific case by case basis to ensure that the County is adequately protected against exposures to loss.

A9. TRANSPORTATION SERVICE PROVIDER

Minimum Limits of Insurance

Provider shall maintain limits no less than:

- 1) *Commercial General Liability Insurance* -- \$1,000,000 limit per occurrence for bodily injury and property damage/\$1,000,000 personal and advertising injury/\$100,000 damage to rented premises/\$2,000,000 General Aggregate/\$2,000,000 Products-Completed Operations Aggregate. The Leasee should indicate in its bid whether the coverage is provided on a claims-made or, preferably, on an occurrence basis. The insurance shall include coverage for the following:
 - a) Premises/Operations
 - b) Explosion, Collapse and Underground Property Damage Hazard (only when applicable to the project)
 - c) Products/Completed Operations
 - d) Contractual
 - e) Independent Contractors
 - f) Broad Form Property Damage
 - g) Personal Injury
- 2) *Business Automobile Liability Insurance* - \$1,000,000 limit per accident for bodily injury and property damage. Coverage is to be provided on all:
 - a) Owned/Leased Autos

- b) Non-owned Autos
- c) Hired Autos
- 3) *Workers Compensation and Employers' Liability Insurance* - Workers Compensation statutory limits as required by Tennessee law. This policy should include Employers' Liability coverage for \$1,000,000 per accident.
- 4) *Umbrella Liability* - \$2,000,000

A10. VEHICLE TOWING CONTRACTS

Minimum Limits of Insurance

- 1) Coverage as required by Shelby County Code Section 7-535.
- 2) *Business Automobile Liability Insurance* - \$1,000,000 per occurrence for property damage and bodily injury. Coverage is to be provided on all:
 - a) Owned/Leased Autos
 - b) Non-owned Autos
 - c) Hired Autos
- 3) *Workers Compensation and Employers' Liability Insurance* - Workers Compensation statutory limits as required by Tennessee law. This policy should include Employers' Liability Coverage of at least \$500,000.

A11. Waterfront Exposures

Consult with Insurance Specialist.

A12. SPECIAL EVENTS, FESTIVALS, ETC.

Minimum Limits of Insurance

- 1) *Sponsor* shall procure at its expense a *Special Events Policy* with a minimum liability limit \$1,000,000 per occurrence. This limit of liability will vary depending on the type, size and location of the event to be held and as determined adequate by the County's Insurance Specialist. The County should be listed as an additional insured on this policy.
- 2) *Employees/Contractors/Subcontractors* of sponsor shall provide evidence of Workers Compensation coverage as required by Tennessee law. This policy should include Employers' Liability Coverage for \$1,000,000 per accident. Coverage is to be included for volunteers.
- 3) *Umbrella or excess liability may be required.*
- Events involving aircraft of any sort, explosives, animals, or festival seating or sale of any type of alcoholic beverage may require additional coverages.

- THESE EVENTS SHOULD BE REVIEWED BY THE INSURANCE SPECIALIST IN THE EARLY PLANNING STAGES OF SUCH EVENTS TO ENSURE THAT ADEQUATE COVERAGE IS REQUIRED AND OBTAINED BY THE SPONSOR OF THESE EVENTS.

Other Insurance Provisions

1) Commercial General Liability and Automobile Liability Coverages

- a) Shelby County Government, its elected officials, appointees, employees, volunteers and members of its boards, agencies, commissions and committees are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, leased or used by the Contractor or premises on which Contractor is performing services on behalf of the County. The coverage shall contain no special limitations on the scope of protection afforded to Shelby County Government, its elected officials, appointees, employees, volunteers and members of its boards, agencies, commissions and committees.
- b) The Contractor's insurance coverage shall be primary insurance as respects the County, its elected officials, appointees, employees, its elected officials, appointees, employees, volunteers and members of its boards, agencies, commissions and committees. Any insurance or self-insurance maintained by the County, its elected officials, appointees, employees, volunteers and members of its boards, agencies, commissions and committees shall be excess of Contractor's insurance and shall not contribute with it.
- c) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to Shelby County its elected officials, appointees, employees, volunteers and members of its boards, agencies, commissions and committees.
- d) Coverage shall state that Contractor's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2) Workers Compensation and Employers' Liability and Property Coverages

The insurer shall agree to waive all rights of subrogation against Shelby County Government, its elected officials, appointees, employees, volunteers and members of its boards, agencies, commissions and committees for losses arising from activities and operations of Contractor in the performance of services under this Agreement.

3) All Coverages

- a) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice has been given (add user department and specify specific individual and title) to the County, except 10 days notice for non-payment of premium.
- b) If Contractor, for any reason, fails to maintain insurance coverage which is required pursuant to this Agreement, the same shall be deemed a material breach of contract. County, at its sole option, may terminate this Agreement and obtain damages from the Contractor resulting from said breach.

Alternatively, County may purchase such required insurance coverage (but has no special obligation to do so), and without further notice to Contractor, County may deduct from sums due to Contractor any premium costs advanced by County for such insurance.

4) *Aggregate Limits*

- a) *Per-Project General Aggregate Limit.* The standard Commercial General Liability policy has a general aggregate limit that places an annual cap on the amount of coverage available for all claims, other than products-completed operations claims, covered by the policy. A standard endorsement to the CGL policy allows a contractor to specify the application of a *separate* general aggregate limit to individual construction projects. This endorsement (CG 25 03) is readily available to most contractors in the current marketplace. It should generally be required in construction contracts. The endorsement guarantees that whatever amount of insurance the contractor is required to maintain according to the provisions of the construction contract will be available to pay claims arising from the project – without those limits being depleted by claims against the contractor arising from other projects.
- b) *Per-Location General Aggregate Limit.* The standard Commercial General Liability policy has a general aggregate limit that places an annual cap on the amount of coverage available for all claims, other than products-completed operations claims, covered by the policy. A standard endorsement to the CGL policy allows the named insured to specify the application of a *separate* general aggregate limit to any or each of its locations. This endorsement (CG 25 04) is readily available to most businesses in the current marketplace. It should generally be required in premises leases if the lessee has multiple locations.
- c) *Each-Occurrence Limit.* There are a number of approaches that may be taken to specify the limits required of the indemnitor. One approach is to specify a dollar amount for each of the primary coverages (i.e., CGL, employers liability, and auto liability), but this can cause problems as discussed under the “Common Errors and Problems” heading below. Probably the best approach is to specify that the occurrence and aggregate limits of the primary policy(ies) will meet the requirements imposed under the indemnitor’s umbrella policy. A minimum limit required for the indemnitor’s overall liability program can then be specified. This allows the indemnitor the flexibility for structuring a layered liability program in whatever manner makes the most business sense while affording the protection required under the contract.

5) *Deductibles and Self-Insured Retentions*

Any self-insurance, self-insured retentions or deductibles must be declared to and approved by the County. At the option of the County, the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects Shelby County, or the Contractor shall procure a bond guaranteeing payment of losses, related investigation, claim administration and defense expenses.

6) *Acceptability of Insurers*

Insurance is to be placed with Tennessee admitted insurers rated A X or better by *A.M. Best’s* rating service or as approved by Shelby County’s Insurance Specialist.

7) *Verification of Coverage*

Contractor shall furnish the County with certificates of insurance and with original endorsements affecting coverage required by this clause. The certificates and endorsements for each policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be received and approved by the County before work commences. Shelby County may at its discretion, request a certified copy of any insurance policy required under any contract or agreement.

8) Subcontractors

Contractor shall include each of its subcontractors as insureds under the policies of insurance required herein or ensure that their subcontractors meet the minimum requirements for insurance specified herein.

9) Defense, Indemnification and Hold Harmless Agreement (Contracts for Services)

Contractor shall indemnify, defend, save and hold harmless Shelby County Government, and its elected officials, officers, employees, agents, assigns, and instrumentalities from and against any and all claims, liability, losses or damages—including but not limited to Title VII and 42 USC 1983 prohibited acts—arising out of or resulting from any conduct; whether actions or omissions; whether intentional, unintentional, or negligent; whether legal or illegal; or otherwise that occur in connection with or in breach of this Contract or in the performance of the Services hereunder, whether performed by the Contractor its subcontractors, agents, employees or assigns. This indemnification shall survive the termination or conclusion of this Contract.

Contractor expressly understands and agrees that any insurance protection required by this Contract or otherwise provided by the Contractor shall in no way limit the responsibility to indemnify, defend, save and hold harmless Shelby County or its elected officials, officers, employees, agents, assigns, and instrumentalities as herein provided.

Shelby County has no obligation to provide legal counsel or defense to Contractor or its subcontractors in the event that a suit, claim or action of any character is brought by any person not a party to this agreement against Contractor as a result of or relating to performance of the Services under this Contract.

Except as expressly provided herein, Shelby County has no obligation for the payment of any judgment or the settlement of any claims against Contractor as a result of or relating to performance of the Services under this Contract.

Contractor shall immediately notify Shelby County of any claim or suit made or filed against Contractor or its subcontractors regarding any matter resulting from or relating to Contractor's performance of the Services under this Contract and will cooperate, assist and consult with Shelby County in the defense or investigation thereof.

INSURANCE COVERAGES AND GLOSSARY OF TERMS

This section defines certain commonly used insurance terms and describes key types of coverages.

Discussion

A. *"Claims-Made" and "Occurrence" - Based Coverages*

Most liability insurance policies sold by the commercial insurance market have traditionally been written on an *"occurrence"* basis, meaning that they insure accidents or events that happen during the policy term, even if the claimant does not make a formal claim until months or years later. For example, a child injured in an accident may, under certain circumstances, be allowed to make a formal claim for damages after reaching age eighteen (18). The insured (e.g., the Contractor or the County) would be protected against this claim by the policy in effect at the time of the accident. Thus, it is important to maintain, on a long-term basis, records of such coverage even after the policies expire.

In recent years, some insurers have developed a new type of general liability coverage which imposes strict deadlines regarding timing of claims by plaintiffs and reporting of accidents and claims to the insurer. This type of coverage is called *"claims-made"* coverage. Although not widely used, it is common enough that you can expect to encounter some of the County's contractors' and vendors' insurance written on these forms.

In its most fundamental form, *"claims-made"* coverage responds to claims made during the policy term, regardless of when the triggering accident or event happened. Using the example of the injured child, the policy that would respond would be the policy in effect at the time that the child made a formal claim, even if years after the event.

While the restrictions may vary somewhat from insurer to insurer, and the forms allow some exceptions, one common version of *"claims-made"* coverage applies only to claims that are submitted to the insurer during the policy term or within sixty (60) days thereafter. Therefore, if the County's protection is to be preserved under this policy form, claims made against the County, either orally or in writing, must be reported immediately to the insurer at the address on the endorsement form. If the coverage has expired, or is about to do so, send notice by the fastest possible means, to reduce the possibility of missing a deadline.

This most common version also makes an exception for claims made within five (5) years after the policy term arising out of incidents that have been reported to the insurer during the policy term or within sixty (60) days thereafter. In other words, if an incident is reported to the insurer that may generate a future claim, coverage is *"locked in"* for five (5) years. If the incident is not reported (e.g., if you don't know about it), then if the claim is submitted after the policy term, the policy does not cover it. Therefore, you should also report incidents to the insurer immediately.

Clearly, when the County arranges to be protected under a contractor's liability insurance for claims arising out of a particular project, *"occurrence"* coverage is preferred, as the needed coverage can be arranged and the full cost known in advance of the project.

Professional liability risks are almost always written on a *"claims-made"* basis, especially professional liability of architects, engineers, medical professionals and consultants. Also,

hazardous products or activities, such as asbestos removal contracting, may be written on a "claims-made" form. However, most types of commercial business are usually written on an "occurrence" form.

B. *Commonly Encountered Insurance Coverages*

1) *Comprehensive General Liability Insurance and Broad Form Comprehensive General Liability*

Comprehensive general liability coverage provides protection against bodily injury and property damage claims arising from the operations of a contractor or tenant. This type of policy provides coverage for: premises and operations, use of independent contractors and products and completed operations. Major exclusions include liability arising out of the ownership, maintenance or use of watercraft, aircraft and automobiles. These exposures are normally covered by other insurance policies.

The County should require a Comprehensive General Liability insurance policy from all contractors and tenants. This form usually has an annual aggregate limit for products and completed operations losses.

The Broad Form Comprehensive General Liability endorsement is a composite endorsement which includes thirteen (13) "add-on" items that expand the coverage of the Comprehensive General Liability Coverage. Add-ons include personal injury, contractual liability and broad form property damage.

2) *Commercial General Liability Insurance*

Commercial General Liability coverage was introduced in 1986. This form combines the two (2) forms described in #1 above. However, it limits all loss payments to two (2) aggregate limits, one (1) for products and completed operations and one (1) for all other loss. This form can be written on either a "claims-made" or an "occurrence" basis. The name of this form is similar to that of the older form used above, so care must be used in distinguishing the names of these forms.

3) *Business Automobile Liability Insurance*

This coverage insures against liability claims arising out of the contractor's use of automobiles. The scope of coverage is defined by the symbol used in the policy. Below are descriptions of automobile designation symbols quoted from standard language used by insurers. Generally, you should require "Code 1", which is the broadest code.

Codes Used in Business Auto Policies

1) Any Auto.

2) Owned Autos Only.

Only those autos owned by the Named Insured (and, for liability coverage, any non-owned trailers while attached to power units owned by the Named Insured). This includes autos acquired after the policy begins.

3) Owned Private Passenger Autos Only.

Only the private passenger autos owned by the Named Insured. This includes those private passenger autos acquired after the policy begins.

- 4) **Owned Autos Other Than Private Passenger Autos.**
Only those autos owned by the Named Insured which are not of the private passenger type (and, for liability coverage, any non-owned trailers while attached to owned power units). This includes autos, not of the private passenger type, acquired after the policy begins.
- 5) **Owned Autos Subject To No-Fault.**
Only those autos owned by the Named Insured which are required to have No-Fault benefits in the state where they are licensed or principally garaged. This includes autos whose ownership entitles the Named Insured to have No-Fault benefits in the state where they are licensed or principally garaged.
- 6) **Owned Autos Subject To A Compulsory Uninsured Motorists Law.**
Only those autos owned by the Named Insured which, because of the law in the state where they are licensed or principally garaged, are required to have and cannot reject uninsured motorists insurance. This includes autos acquired after the policy begins, provided they are subject to the same state uninsured motorists requirement.
- 7) **Specifically Described Autos.**
Only those autos described in the policy for which a premium charge is shown (and, for liability coverage, any non-owned trailers while attached to those described power units).
- 8) **Hired Autos Only.**
Only those autos leased, hired, rented or borrowed by the Name Insured. This does not include any auto leased, hired, rented or borrowed from employees or members of their households.
- 9) **Non-Owned Autos Only.**
Only those autos owned, leased, hired or borrowed by the Name Insured which are used in connection with business. This includes autos owned by the Named Insured's employees or members of their households, but only while used in the Named Insured's business.

Automobile coverage requirements should be waived only when the other party's work clearly does not involve the use of an automobile. Should any doubt exist, this coverage should be required.

- 4) *Workers Compensation and Employer's Liability Insurance*
Workers Compensation insurance provides statutory protection against bodily injury, sickness or disease sustained by employees of the other party in the scope of their employment. It should be required of any other party performing work for the County.

Employers' Liability coverage is usually included in Workers Compensation policies. It insures common law claims of injured employees made in lieu of or in addition to a Workers compensation claim.

C. Other Terms and Types of Insurance

- 1) *Liquor Liability for the Sale of Liquor*

If the tenant is not in the liquor-selling business, but is serving liquor for an event such as a Christmas party, Comprehensive General Liability or Commercial General Liability insurance is appropriate. If the tenant is in the business of manufacturing, distributing, selling, serving or giving alcoholic beverages to the public or is a landlord of such a business, special liquor liability coverage would be required.

The County should require liquor liability coverage from every tenant that sells or serves alcoholic beverages on County property.

2) *Aircraft Liability and Watercraft Liability Insurance*

These coverages protect contractors against liability for injury to other people and their property arising out of the ownership or use of aircraft or of watercraft.

This coverage should be required of any contractors using aircraft. Aircraft liability coverage should be extended to include passenger liability.

3) *Property Insurance*

This type of insurance protects against financial loss resulting from destruction of property by insured perils such as fire. This is a different type of coverage than property damage liability insurance, which covers the insured's legal liability for damage to others' property.

Property insurance should be required when the County has a financial interest in property leased to others. Generally, the County should purchase the property insurance when it owns the building, rather than requiring the tenant to purchase coverage on behalf of the County. The advantages of the County purchasing the property insurance are:

- a) Assurance that adequate coverage is afforded; and
- b) Assurance that premiums will be paid, thus avoiding cancellation for non-payment of premium.

If the tenant owns the building (on land owned by the County), the County may wish to have the tenant purchase the insurance and name the County as a loss payee. Also, the tenant's policy should:

- a) Provide coverage against at least fire and the extended coverage perils (defined in insurance policies as windstorm, hail, explosion, riot, civil commotion, aircraft, vehicles and smoke); and
- b) Insure the building to at least 90% of its replacement cost.

4) *X, C, U Hazards*

"X" = explosion

"C" = collapse

"U" = damage to underground property

Comprehensive General Liability and Commercial General Liability policies usually automatically insure liability for these risks, as defined in the policy. However, certain contractors must pay additional premiums to obtain these coverages or the underwriter will issue the policy excluding X, C and U perils. Therefore, these coverages should be specifically listed

and required in the Bid/RFP and evidenced on the certificate of insurance by the contractor.

5) *Waiver of Subrogation*

Waiver of subrogation means the relinquishment of a right to seek reimbursement for a loss from the responsible party. For example, the County often requires that a waiver of subrogation be added to a contractor's Workers compensation policy, to prevent the insurer from paying the claim of an injured employee, then seeking reimbursement from the County if a defect in the County's premises caused the injury.

6) *Loss Payable Clause*

Property insurance provision authorizing the insurer to pay any loss to the insured or to others identified in the policy as their interests in future losses may appear at the time of those losses.

7) *Endorsement*

Document attached to a policy which modifies the policy's original terms.

8) *Occurrence*

Means an accident, incident, etc. including continuous or repeated exposure to substantially the same general harmful conditions.

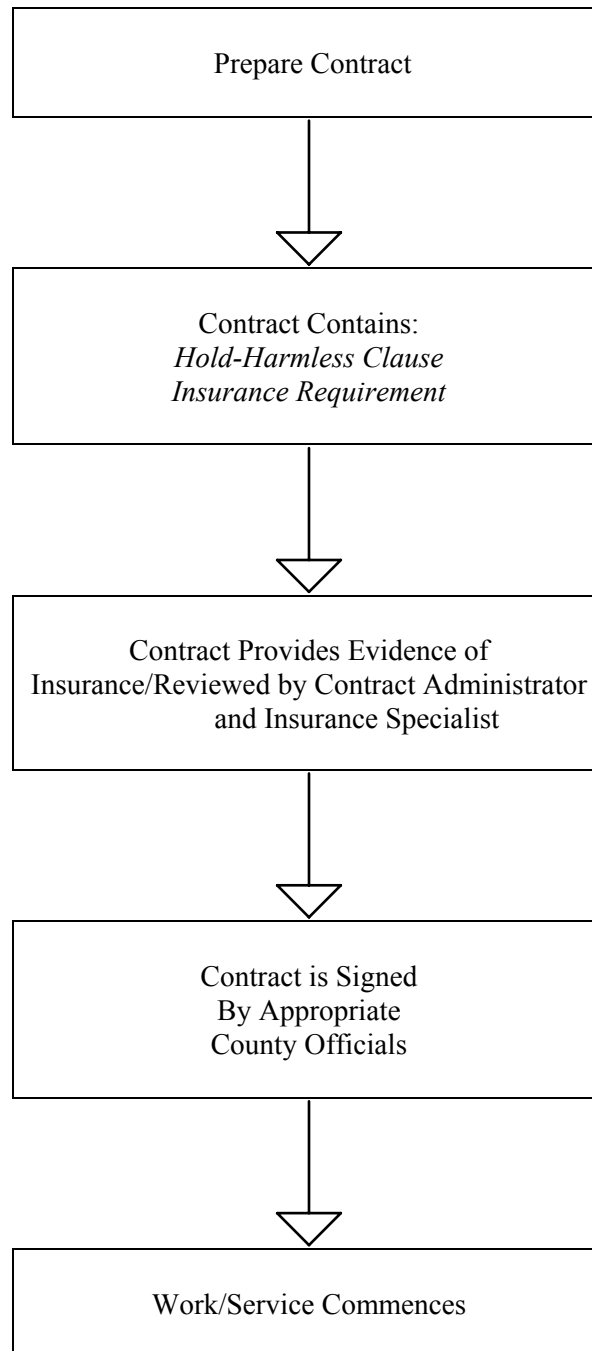
9) *Automatic additional insured*

Policy contains an endorsement which automatically includes as additional insured any entity which contracts with the insured and requires additional insured status.

10) *Additional Insured Status*

Additional insured status can be provided to another organization (e.g., an indemnitee under a contract) by endorsement to the commercial general liability policy. While such grants of additional insured status are subject to approval of the underwriter, most underwriters are amenable to these requests when there is a valid business reason for them. One of the primary reasons for requiring additional insured status is that it serves as a backup to the indemnity provision between the Contractor (the named insured) and the additional insured. If the risk transfer in the indemnity agreement is declared invalid, as sometimes happens, there will be no legal obligation to indemnify and the contractual liability coverage provided by the Commercial General Liability insurance policy thus will not be triggered. However, as an additional insured, the indemnitee has direct access to the indemnitor's insurance for claims falling within the scope of coverage provided in the additional insured endorsement. While indemnification and additional insured status are intended to function together as complementary risk transfer mechanisms, they should be treated within the contract itself as separate provisions – not combined within the same section of the contract, or linked in any way that would suggest that the enforceability of one is dependent on the enforceability of the other.

**Overview of Process for Using
Hold-Harmless and Insurance Clauses**



March 7, 2006